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Current Topics.

Tax Evasion.

THERE was some discussion both on the second and on the third readings of the Finance Bill in the House of Commons on the 29th June and 7th July, on the legitimacy of advice given by solicitors and barristers with a view to escaping liability for income tax. The discussion began on the motion of the Attorney-General to insert a new clause dealing with a case where a person had received financial benefits by reason of the transfer by him of certain shares. EARL WINTERTON said that as he understood the amendment any solicitor, barrister, accountant or banker who took part in the transactions affected and who did not know of their criminal character would not have to pay any penalty. He said that that was reasonable, but that there was a class of persons, very few in proportion to their general numbers, who disgraced their honourable professions and spent their time encouraging tax dodgers, and if a prosecution took place, and they had no actual knowledge of the transaction, and did not get more than the normal rate of remuneration they could carry on as before. Dr. RUSSELL THOMAS said that it had always been recognised as one of the finest principles in the administration of justice that a person could go to his solicitor and tell him anything without fear of disclosure, even if it incriminated him. Mr. PETHICK LAWRENCE said that a barrister or solicitor who assisted a person who might or might not have committed a crime might not be liable, but if a person wanting to commit a crime went to a lawyer in advance to find out if he could do it and was less badly off as a result, he was not sure that the lawyer who gave that advice was not an accessory before the fact. The discussion was resumed on the third reading, when Mr. ETHERTON said that judges had said in the courts time and time again that there could be no ethics in crime or in taxation. The arrangement of one's affairs in legal and proper form so as not to be liable for extra taxation was not always a matter of morals working in one direction. Dr. RUSSELL THOMAS said that lawyers acted quite properly in the course of their profession in advising clients on these matters. In reply, Sir KINGSLEY WOOD referred to the recent pronouncement on the subject by the Lord Chancellor, and said that it was one thing for the taxpayer to see that he was charged no more tax than the law allowed by reference to his actual circumstances, and quite a different thing for the taxpayer to enter into highly artificial and ingenious devices so as to make his circumstances appear to be something different from what they actually were, and it was this which lay at the root of avoidance of taxation. In pre-war years it was found necessary to pass a considerable amount of complicated legislation to defeat those who resorted to such methods. It had, happily, not proved to be necessary during the war, for the national purpose had undoubtedly been fortified by a spirit that recoiled from the employment of methods such as those which had been discussed during the Finance Bill.

Restriction of Ribbon Development.

ON the motion for the second reading of the Restriction of Ribbon Development (Temporary Development) Bill in the House of Commons on 1st July, the Joint Parliamentary Secretary to the Ministry of Transport explained that ss. 1 and 2 of the Ribbon Development Act, 1935, had given highway authorities power to refuse to allow development within 220 feet of the middle of classified and certain other roads. That provision, he said, had not been as effective as could have been desired, and there had been more ribbon development in the country than the Government hoped. He thought that this was due not to any reluctance on the part of highway authorities to operate the Act, but because of financial difficulties, and questions of compensation, and because Parliament had not made provision for assisting highway authorities in such circumstances. Authorities were now constantly faced by demands from people who wanted to develop within the strips along the road for purposes connected with the war effort, and there was no power to grant leave for development subject to the term of demolition at the end of the war, although some authorities had tried to give temporary consents. Sometimes development began without consent being obtained, the 1935 Act being completely ignored. The Bill was an attempt to get rid of the difficulty by allowing in effect, though not quite in form, a temporary consent. It also provided that where councils had tried to give a temporary consent the right of demolition should be there at the end of the war. In other cases authorities would be able to give temporary consent and retain the right to go to court and ask for the demolition at the end of the war. In answer to general criticisms of the measure, Mr. NOEL-BAKER said that the Government recognised the great purpose embodied in the Town and Country Planning Act which had been recently passed, and he would be ready to look at any suggested form of words for insertion in the Bill to show that the Government recognised the need for discretion in respect of planning for the country after the war. The Bill was read a second time and committed to a Committee of the whole House.

Pensions Appeal Tribunals.

THE criticism which caused the temporary withdrawal of the Pensions (Appeal Tribunals) Bill on committee stage in the Commons was not directed so much against the functions or constitution of the appeals tribunals as against the present terms of the Royal Warrant under which the war pensions are payable. The Bill will be brought before the House again when members have been informed of the Government's new war pension proposals, which have been under consideration for four months, and which are to be embodied in a new Royal Warrant. It is understood that final approval will be a matter for the War Cabinet. As there are departmental views to be reconciled, decisions may take longer than had been expected. The scope of the Bill, it is remembered, is extremely wide, and covers not only members of the Armed Forces, but also persons serving in the Merchant Navy, the civil defence services and other civilians who have suffered war injuries. In view of all these complexities, speedy decisions, though desirable, will not be expected, and hasty decisions will certainly have to be avoided. Mr. EDEN, in moving in the Commons on 1st July to report progress, said that there need not be any delay in the actual setting up of the tribunals, though he could not give any definite pledge as to this.

Compensation Principles.

THE special position of persons who have suffered loss through evacuation from coastal areas is the subject of a memorandum recently approved by the Folkestone Reconstruction Committee. The memorandum is the result of the deliberations of the Compensation Sub-Committee and is the work of three solicitors, Messrs. C. ROOTES, G. P. MEDLICOTT and B. H. BONNIFACE. In view of the many claims that might be pressed after the war, some by powerful influences, it is said that the Government is placed in a very great difficulty in considering claims for compensation, even if by reason of the threat of invasion and incessant enemy activity since 1940 the Government were favourably disposed towards, say, the South-Eastern areas. After referring to the situation created by the Defence (Evacuated Areas) Regulations, under which rent, rates, mortgage money and other periodical payments are not recoverable during the evacuation period, the memorandum states that the regulations were so effective that the population of Folkestone was reduced from about 48,000 to something less than 9,000 in a few weeks. One curious effect of the regulations was that heavy arrears were piling up against debtors pending the end of the evacuation period. In practice, states the memorandum, since most of the debtors are persons of small means or persons who have themselves been injured by the regulations, it will mean that the persons to whom the debts would fall due will actually lose all their money. In many cases, it is said, agreements have been made whereby people who could afford to do so have paid one-third or one-half of the amount due in full settlement of the debt. The loosening, however, of the legal right of the creditor to

enforce payment had meant that traders had suffered enormous losses, and it seemed to the writers of the memorandum that the Government had said to people in effect: "If you leave the town you need not pay X what is due to him," and that they could not escape moral liability for compensating X for the loss he had sustained.

The Proposals.

THE principles which, it is suggested, should be applied in compensating persons affected by the Defence (Evacuated Areas) Regulations are: (1) The Government should pay to landlords the rent at the rate applying on 16th July, 1940, of all premises then let and which were then or subsequently were evacuated, less any sums paid by tenants on account of rent. (2) The Government should also pay to tenants who evacuated such sums as they had paid in respect of rent. Where rents had been reduced on reletting, landlords should be paid such sums as would make up the rents to the full amount appertaining on 16th July, 1940. (3) In cases where property affected by the order had been requisitioned by any authority and a lower rate of compensation paid than is equal to the full rent as on the 16th July, 1940, the Government should make up the difference. (4) The Government should pay to mortgagees such sums as represent interest alone on premises affected by the regulations at the rate applying on 16th July, 1940, apportioned from that date until the end of the evacuation period. (5) Where payments on account of interest have been made, these should be refunded by the mortgagees to the borrowers. In case of mortgages of fluctuating amount or repayments by instalments including principal, interest to be payable only on the principal sum as on 16th July, 1940. (6) The Government should pay all sums falling due under hiring or hire-purchase agreements during the evacuation period in respect of the hire of goods under contract affected by the order and should repay any sums paid by the persons liable. No sum should be recoverable under this head in respect of purchase instalments, and where the contract is for hire-purchase, the sum recoverable should be limited to a reasonable annual percentage of the value of the goods when the contract was made. (7) Where an order has been made modifying or removing the restrictions where the person liable has since the commencement of the period resided in the area or enjoyed a substantial benefit from the premises or goods, the compensation should be in respect of any sum above that payable under the court's order. It is also pointed out that extinguishment of a debt under the Liabilities (War-Time Adjustment) Act, 1941, should not operate to prevent compensation being paid to the creditors affected. The proposals bear the obvious marks of careful consideration of the problems involved, by persons concerned in the daily handling of those problems in an affected locality, and for that reason alone deserve the attention of our legislators. The ideal of voluntary arrangements between creditor and debtor under the Liabilities (War-Time Adjustment) Act, 1941, provides the best solution in theory, but has been far from generally practised. It is submitted that the time is now ripe for the re-examination of all the problems involved in the light of the experience gained of the working of the Act.

The Rent Acts and the Public.

WHAT can be done by a progressive local authority in the direction of giving greater publicity to the provisions of the Rent Acts dealing with furnished and unfurnished premises is demonstrated in two leaflets recently published by the Manchester Corporation. The functions of the council under s. 10 of the Rent Restrictions (Amendment) Act, 1933, to publish information, for the assistance of landlords and tenants, as to their rights and duties under the Rent Acts and as to the procedure for enforcing such rights or securing performance of such duties, as well as to furnish particulars as to the availability, extent and character of alternative accommodation, are exercised in Manchester by the housing committee, who for this purpose have co-opted a representative of the Manchester and Salford Property Owners' Association, the Manchester and Salford Trades Council, the Manchester and Salford Women Citizens' Association, the Manchester and District Branch of the Auctioneers' and Estate Agents' Institution, and last, but not least important, the Manchester and Salford Poor Man's Lawyer Association. The two pamphlets deal with the scope and object of the Rent Acts, the calculation of the correct rent both in the cases of "old-controlled" and "newly controlled" houses, the ascertainment of standard rent, the permitted increases of rent, the provision of rent books, the recovery of overpayments of rent, the illegality of key money, the protection from distraint and eviction, the restrictions on sub-letting and protection of sub-tenants, the rights of members of a tenant's family on his death, applications to the county court, the service of notices and disclosure of the landlord's name and address, penalties for extortionate rents, excessive rents, the requisitioning of furnished premises and the meaning of "furnished premises." Copies of the pamphlets are to be obtained from the Information Bureau, Town Hall, Manchester, 2, or from any District Library in the city, and citizens are invited to make any necessary inquiries at the Assistant Solicitor's Office at the Town Hall. The pamphlets contain all the necessary information in a clear and concise form, and provide a model for all local authorities with housing problems. Such publicity does not provide the whole solution of our present housing difficulties, but it provides no negligible part of what must be done by the local authorities.

Paper Salvage.

THE challenge of the R.A.F. to the civilian population, said Squadron Leader R. A. B. LEAROYD, V.C., in opening a "Books into Battle" exhibition in London recently, was—Salve all paper. Every aeroplane, bomb, shell and bullet needed it. The public must look after salvage in the same way as the rear gunner in a bomber looked after his ammunition. The R.A.F. has itself set a good example. In April, 1941, according to a statement by Captain A. H. BALFOUR, Under-Secretary for Air, the R.A.F. salved 1,928 tons; in April, 1942, 7,606 tons; in April, 1943, 10,368 tons. The newspaper put in the salvage bin instead of being burnt in the kitchen grate helps to make compressed laminated struts for up-to-date types of R.A.F. aircraft. The Council of The Law Society has performed a useful service by publishing in the June issue of *The Law Society's Gazette* a few of the recommendations to solicitors for paper economy that have been made from time to time. These are: (1) Correspondence should be typed in single spacing on octavo paper wherever possible, both sides being used. (2) For all rough drafting work, the reverse side of old paper used for some other purpose should be used. (3) In some cases the carbon copy of an outgoing letter might be made on the reverse side of the letter to which it is a reply. (4) When acknowledgments are necessary, a postcard should be used wherever possible. (5) No document should be typed in more than double spacing. Engrossments and all other documents which do not require material alteration of wording should be typed in single spacing. (6) The margins at the sides and top and bottom of paper should be made as small as practicable. (7) The space between paragraphs should be made as small as possible. (8) Documents should be engrossed on quarto size paper instead of foolscap where the documents are short, it being remembered, however, that in the case of a long document the use of quarto size paper instead of foolscap may result in waste owing to the need for margins at the top and bottom of each sheet. (9) Endorsements should, when possible, not be on a separate sheet of paper. They can often be written on a few inches of space remaining on the last sheet of the engrossment. (10) The saving of paper can be effected by placing exhibit marks on the margin of documents instead of on the endorsement. (11) Briefs and instructions to counsel should, where possible, be on foolscap or quarto size paper and should be typed in single spacing. Members are also reminded of the terms of the Control of Paper (No. 48) Order, 1942, and of R.S.C., Ord. XIX, r. 9; Ord. LXVI. r. 3 (1), and S.R. & O., 1942, No. 1172. The Law Society's mail still contains a number of letters typed with double spacing on one side of the paper only and reports which reach the Paper Control show that in many cases the necessary economies are still not being made in the preparation of draft documents, engrossments, instructions to counsel, copy correspondence, and the like. The profession's record with regard to paper economy, says the *Gazette*, is good, but there is a high proportion of unskilled staff now employed in solicitors' offices. Every effort should be made to make all persons working in solicitors' offices salvage conscious.

Repair and Maintenance of Buildings.

IN the "Current Topics" of the issue of the JOURNAL of 3rd July, we summarised the effect of a circular issued on 9th June to all metropolitan borough councils and to the London County Council (Circular 2828) on the new arrangements that have now been made to secure a special priority for labour for work of maintenance or repair which are the subject of a statutory notice under the Housing or Public Health Acts, or works otherwise authorised by the local authority as essential to avoid danger to health or grave deterioration of structures. A circular in similar terms was on 25th June sent to county borough councils, town councils, urban district councils, rural district councils and county councils in England (Circular 2828A), and we refer to our previous topic on the subject (*ante*, p. 232). The circular expressed the hope that the new scheme will facilitate the execution of essential maintenance works and the confidence of the Minister that he can rely on the co-operation of the local authorities.

Recent Decision.

In *King* v. *King*, on 7th July (*The Times*, 8th July), the Court of Appeal (SCOTT, MACKINNON, LUXMOORE, GODDARD and DU PARCQ, L.JJ., and BUCKNILL, J.) held that a wife's application for security for her costs in an appeal by her husband against the dismissal of his petition on the ground of his wife's alleged adultery would be granted, as the Court of Appeal had jurisdiction to make such an order, and would do so in appropriate circumstances. In such a case as that before the court the common law rule was that the wife had authority to employ legal help at the expense of her husband, but the court limited its decision to such cases as that before the court, because where a decree of dissolution of marriage was made on the ground of a wife's adultery, the doctrine of common law agency would seem to be excluded.

Tenant's Option to Re-enter.

No decision appears yet to have been reported on s. 1 (6) of the Landlord and Tenant (War Damage) (Amendment) Act, 1941. The subsection may be summarised as follows: Where the court is satisfied, on the application of the landlord of any land let on a short tenancy which has been rendered unfit by war damage, that (*a*) the land is fit; (*b*) a period of not less than three months has elapsed since the land was rendered fit, and during the whole of that period the tenant has not been in occupation of the land . . . and has not paid any rent . . .; and (*c*) the landlord has made all reasonable efforts to communicate with the tenant and has failed to do so—the court may, if it thinks fit, determine the tenancy and give immediate possession of the tenant's interest in the land . . .

At first sight this is a one-sided provision, as it confers rights on the landlord, but not upon the tenant. On re-reading the subsection, however, it appears to be significant by what it leaves unsaid. Unfortunately, the implications of the subsection lead to obscurity and ambiguity. For example, do the words "the court may, if it thinks fit, determine the tenancy" imply that, until the court does determine the tenancy, the latter continues to be valid?

In this connection, it is necessary to bear in mind s. 6 (2), viz.: "Where for any period any land let on a short tenancy is unfit by reason of war damage and is not occupied either in whole or in part by the tenant, no rent shall be payable under the tenancy or in respect of that period." Attention should also be directed to s. 1 (8), viz.: ". . . a tenant shall not be deemed to be in occupation of any land which is unfit by reason of war damage by reason only—(*a*) that furniture or other goods belonging to or used by him remain on the land; (*b*) that he visits the land from time to time for the purpose of removing or taking steps to preserve any such furniture or goods; or (*c*) that he retains possession of the keys of any buildings or works situated on the land, . . ."

Here, again, the provisions are all in favour of the landlord. There is no obligation upon him to notify the tenant that the premises have been rendered fit. The inference from the above provisions is that the tenant has in law an option to re-enter, but the section is silent in regard to cases in which the tenant, having been evacuated to a distant address, is unaware of the fact that the premises are again fit for occupation. If the landlord re-lets the premises to a new tenant, what is the original tenant's remedy?

After enemy action, many tenants moved their whole home and furniture to a new address. Does this, however, constitute an abandonment of the tenancy? The circumstances are not analogous to those of a "moonlight flit" in pre-war times. Apparently, it is a question of fact for the court whether the tenant's removal constituted an abandonment of the tenancy.

If the premises have been re-let, the new tenant will have acquired rights in the property. The court would therefore not grant specific performance, at the suit of the original tenant, by making an order for possession in his favour. The claim would only succeed against the landlord in respect of damages.

A claim for possession by a tenant appears to be somewhat of a novelty. This appears, however, to be the correct procedure, for a tenant who happens to be aware of his right to re-enter, on the repair of the war damage and the restoration of the premises to a state of habitability.

In view of the uncertainty of the position, a further amending Act appears to be called for, defining the rights of tenants (at common law or under the principal Act) and prescribing a procedure for the assertion of such rights, or creating a remedy if such rights are ignored, e.g., by a re-letting to a new tenant.

A Conveyancer's Diary.

Occupier's Liability: Bombed Premises.—II.

I PROPOSE this week to consider various further points suggested by *Leanse* v. *Lord Egerton* [1943] 1 K.B. 323. As they are purely matters of common law, I ask the indulgence of readers, who will no doubt correct the grosser of my misconceptions.

Sedleigh-Denfield v. *O'Callaghan* [1940] A.C. 880, was a case where a nuisance was caused by a trespasser on the defendants' land, and the latter were held to have "continued" it. Lord Maugham, however, expressly said, at p. 888, that the case was not one to which the principle of *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, applied. I conceive the difference to be this: in the *Rylands* v. *Fletcher* class of case the defendant, to serve some end of his own, collects on his land some substance which is calculated to cause damage if it escapes, but which may well be quite innocuous where it is. In *Rylands* v. *Fletcher* itself, as everyone knows, the substance collected was a mass of water; but it could be anything, for example, a cylinder of poison gas or a test-tube of disease germs. Where any such substance is collected and does escape and does cause damage, the defendant is *prima facie* liable, however ignorant or innocent he may have been; he cannot escape liability unless he can affirmatively establish one of the recognised defences. One such defence is "Act of God or *vis major*," that being the expression used by the court in *Nichols* v. *Marsland*, L.R. 10 Ex. 255. I discuss its meaning below. In the ordinary case of nuisance the defendant causes or continues a state of affairs on his land which is in itself a source of danger to others, even if there is nothing abnormal about it, and, in the case of continuance, even if the state of affairs serves no end of the defendant's. The grating in *Sedleigh-Denfield's* case was a nuisance of this class. One group of questions raised in my mind by *Leanse* v. *Lord Egerton* is as follows: (*a*) does the act of the King's enemies provide a defence to an action based on *Rylands* v. *Fletcher* in the same way as Act of God does? (*b*) In either event, is a like defence available in an ordinary action for nuisance? I do not think that there is any direct authority on the first point, mainly because, in the days when this part of the law was under discussion, damage by the King's, or Queen's, enemies to premises in this country had not occurred for a very long time and there was no particular reason to suppose that it would ever occur again. But there are, I think, certain indications. First, in *Paradine* v. *Jane*, Aleyn 27 (a case arising out of the Civil War), the court took the distinction that "Where the law creates a duty or charge, and the party is disabled to perform it without any default in him and hath no remedy over, there the law will excuse him: as in the case of waste, if a house be destroyed *by tempest, or by enemies*, the lessee is excused . . . But where a party, by his own contract, creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract." The liability under *Rylands* v. *Fletcher* obviously falls within the first of those categories as being imposed by law and not by contract. Tempest and enemies are here treated alike. Second, in *Rylands* v. *Fletcher* itself, Blackburn, J., delivering the judgment of the Exchequer Chamber which was expressly approved by the House of Lords, said that it might be a defence if the "escape was the consequence of *vis major or* the act of God" (at p. 280). In *Nichols* v. *Marsland*, McIntyre, Q.C., *arguendo* spoke of "*vis major*" as being "something which cannot be foreseen or resisted, as an earthquake or the act of the Queen's enemies." The court accepted his general argument and evidently did not think it necessary to comment adversely upon this part of it. The true position is, I think, that "*vis major*" excuses the defendant from liability under *Rylands* v. *Fletcher*, and "*vis major*" is a term embracing natural catastrophes, sometimes called "acts of God," and also acts of the King's enemies. One may perhaps test the matter thus: The lake behind the Möhne dam would, if it had been in England, have raised exactly the same point as the pools in *Nichols* v. *Marsland*: both were created by damming a natural stream. The pools in *Nichols* v. *Marsland* were carefully kept, but overflowed because of what the newspapers nowadays call a "cloudburst": the defendant was not liable. Could he have possibly been liable if the overflow had been caused, not by a cloudburst, but by the bursting of a mine dropped by an enemy, as happened to the Möhne dam?

It seems reasonably clear that act of the King's enemies is a defence to an action founded on *Rylands* v. *Fletcher*. But I do not think that it is a defence to a simple action of nuisance for allowing a dangerous state of affairs to exist on one's land. In the first class of case the liability is one that is *prima facie* absolute for the escape of something which, though not dangerous or a nuisance, until it does escape, is liable in that event to do damage. In the other class, the wrongful act consists in maintaining the dangerous state of affairs, whether or not there is actually any damage, although no action for damages lies until damage is caused. The distinction can best be shown by considering what would happen if the proceedings were for a *quia timet* injunction. I obviously could not get such an injunction merely because my neighbour has on his land a well-kept reservoir or a cylinder of poison gas, though I should get damages if the water or gas escaped and did me harm. Conversely, if my neighbour's house is in a foundrous condition, and is liable to fall on my garden, I could get such an injunction without waiting for it to fall, because it is wrongful to maintain a dangerous wall. Where the nuisance exists and is followed by damage, the defendant is clearly not going to escape liability just because the proximate cause of the damage was an earthquake.

There is, I think, a very difficult intermediate case which is put by Bramwell, B., in *Nichols* v. *Marsland*: "If a man kept a tiger and lightning broke his chain and he got loose and did mischief," what would be the position? The learned baron said that he was not at all sure that the tiger-owner would not be liable. The tiger is to this extent like an ordinary nuisance; but on the other hand, a neighbour could hardly get an injunction against the keeping of a tiger who was chained efficiently enough to provide against all contingencies except lightning. I think that keeping savage animals must be in a category by itself. If act of the King's enemies is on a par with act of God, the authorities of the Zoological Gardens would have been safe from liability, even if bombs had set the inmates free to roam London, seeking what they might devour. Thus Bramwell, B.'s instance of the chained tiger might have become less academic than it originally sounded.

In *Leanse* v. *Lord Egerton*, it was not that an existing nuisance came to cause damage because of the bomb, but that the nuisance itself only came into existence by the action of the bombs. These facts seem distinguishable from those of *Nichols* v. *Marsland*, but not from those of *Sedleigh-Denfield's* case, save on the question, discussed last week, whether in *Leanse* v. *Lord Egerton* the defendant had "continued" the nuisance to the same degree as had occurred in *Sedleigh-Denfield's* case. The hostile aviator appears merely a particular species of trespasser who creates a nuisance on the land of another.

I understand that insurance policies against occupier's liability are now generally expressed not to cover any contingency "occasioned by or happening through (*inter alia*) war, invasion, act of foreign enemy, hostilities (whether war be declared or not)." It seems an interesting matter for speculation whether the damage in *Leanse* v. *Lord Egerton* was "occasioned by" hostilities or by the fact that the defendant "continued" a nuisance. But "happening through" is such a wide expression that it seems possible that a defendant could lose the action but yet not have a right to indemnity under his policy.

Finally, it is to be observed that *Leanse* v. *Lord Egerton* was pleaded in nuisance. The plaintiff, by walking close under a recently bombed building instead of crossing the road, acted in such a way that a jury, if asked, might quite well have found that she had been negligent. But contributory negligence is not a defence to an action of nuisance, and the case shows that it may at times still be important to draft pleadings with the accuracy of an older day.

Landlord and Tenant Notebook.

Inferences from Acceptance of Rent.—I.

UNTIL a few years ago, the uncritical among us would, with little hesitation, have subscribed to these two propositions: (1) When a landlord accepts rent after a term has expired by effluxion of time a new tenancy is created. (2) When a landlord accepts rent after a cause of forfeiture is known to him, he waives the forfeiture. The purpose of this article and the next is to examine whether modifications undergone by the first proposition may result in modifications of the second one.

With the first went a subsidiary proposition, viz., that if the old tenancy was for a term of years the tenancy is a yearly one.

The modification affecting the main proposition is to be found in *Davies* v. *Bristow, Penrhos College, Ltd.* v. *Butler* [1920] 3 K.B. 428, and is at present limited to the case of holding over by a tenant claiming the protection of the Rent, etc., Restrictions Acts; the modification of the other was brought about by the judgment of Maugham, J., in *Ladies' Hosiery and Underwear, Ltd.* v. *Parker* [1930] 1 Ch. 304 (C.A.): strictly speaking, to *obiter dicta* uttered in the course of that judgment, which were not discussed by the Court of Appeal. It will be convenient to say something about this case first.

The facts, as far as relevant, were that one of the defendants (the other being his wife) had held a three years' lease of a shed which expired in 1917. Rent was payable weekly, the amount of each payment being £2. On the expiration of the lease the male defendant went on paying rent at the same figure to the grantor of his old lease, but the grantor was himself a sub-tenant and his term expired in 1923. In the meantime, namely in 1920, a bank acquired the grantor's interest, and later in the same year the plaintiff company acquired a fifty years' lease of part of the property. When the grantor's term expired he told the tenant to pay rent to the bank; this was done, and there was no apportionment between the bank and the plaintiffs, to whom no rent was ever paid. It was not till 1927 that the position began to be investigated, and when at length a writ was issued the defendant's status had to be determined. Maugham, J., having "to perform the functions of a jury," came to the conclusion "on a balance of considerations," that no consensus *ought to be inferred* under which the defendant had become tenant from year to year, but went on to consider, *obiter*, the possible question whether, if he had become tenant at all, the holding was a yearly one. Neither the learned judge nor learned counsel had found a case exactly in point, and his lordship held that while the original tenancy had been for three years, it was not a lease at a rent of £104 per annum payable weekly, but at a rent of £2 a week; and this *warranted the inference* that the tenancy which would have been created by holding over would have been from week to week.

In *Davies* v. *Bristow, Penrhos College, Ltd.* v. *Butler*, a Divisional Court considered two appeals in cases in which tenants had claimed the protection of the Rent, etc., Restrictions Acts, and had been held not to be entitled to that protection. In each case the landlord had accepted rent after expiration of notice to quit, and the question was whether the tenants had thus acquired new tenancies. The court held that they had not: Lush, J., drew a distinction between the position and that which obtains when a forfeiture is waived, for the landlord is not put to any election, and the agreement for a new tenancy has to be proved. Acceptance of rent from a tenant relying upon the statutory protection did not make the parties *ad idem*. The line taken by Shearman, J., was that as the landlord was prevented from recovering possession by the Acts, the tenant is not a trespasser, as he would otherwise be, and is in lawful statutory occupation unless a contractual tenancy be proved.

These judgments do not, perhaps, explain away the acceptance of rent as such as clearly as might have been desired. The judgment of Maugham, J., in *Ladies' Hosiery and Underwear, Ltd.*, usefully reminds us—notably the passage in which his lordship points out that he was discharging the functions of a jury—that the question is ultimately one of fact. The real difficulty facing landlords in these cases is, having received money payments described by the payers as rent, how to avoid the inference of an agreed tenancy—for "rent" is a term applicable to payments under a tenancy, and not to that species of damages for trespass known as mesne profits. In effect, it might be said that *Davies* v. *Bristow* means that, in view of the Rent, etc., Restrictions Acts, a different inference can be drawn. The decision was somewhat half-heartedly given Parliamentary approval by s. 16 (3) of the 1920 Act, by which acceptance of rent for not more than three months "shall not be deemed to prejudice any right to possession . . . and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits." But this enactment has not, as authorities have shown, seriously disturbed the common law position and the rule that essentially the matter is one of inference from conduct. If acceptance of rent for not more than three months is not to prejudice any right to possession, it does not follow that acceptance for a longer period will, in the face of *Davies* v. *Bristow*, prejudice that right.

Such, at all events, was the reasoning employed in *Shuter* v. *Hersh* [1922] 1 K.B. 438, in which a claim for possession was based on arrears of rent the right to which was in turn based on a notice of increase of rent. The plaintiff, in order to establish that the increase was "in respect of a period during which but for the Act he would be entitled to possession" (1920 Act, s. 3 (1)), invoked a notice to quit which had expired more than three months earlier; the defendant relied on the fact that he had remained in possession and paid rent and that this had been accepted by the plaintiff throughout the intervening period. The county court judge held that the effect of s. 16 (3) was that if more than three months' rent had been accepted there was no longer any valid notice to quit in existence (note that this was before the passing of the Rent Restrictions (Notices of Increase) Act, 1923); reversing this judgment, Bankes, L.J., said that he (*a*) could not place that construction upon s. 16 (3); and (*b*) could not draw the *inference of fact* from the mere acceptance of rent that any fresh tenancy was created.

Our County Court Letter.

Jurisdiction in Housing Cases.

IN six cases at Chesterfield County Court, applications were made for orders for possession of six houses at Mosbro'. The case for the landlords was that it was reasonable to make orders for possession, as they were incurring daily penalties for permitting the premises to be occupied after demolition orders had been made. The landlords had been convicted of this offence by the Renishaw magistrates. The houses had merely been let temporarily until other accommodation could be found. A difficulty had arisen, however, by reason of the refusal of the Chesterfield Rural District Council to grant licences for the houses to be occupied. The Ministry of Health had also refused to intervene. His Honour Judge Willes observed that anything which was prohibited by Act of Parliament could not give rise to a cause of action. If the occupiers of the houses were trespassers, they could be ejected without an order of the court. It appeared that the applicants had acted illegally in letting the houses, and they could not therefore seek the aid of the court, which had no jurisdiction. No orders were accordingly made.

Decision under the Workmen's Compensation Acts.

Lump Sum for Nystagmus.

IN *Woodhouse* v. *Conduit Colliery Co., Ltd.*, at Walsall County Court, the applicant's case was that in July, 1942, he had claimed arbitration, but the registrar had referred the case to the medical referee. On appeal to the county court judge, however, this decision was reversed, and an order was made for the case to be heard in the county court. This decision was upheld by the Court of Appeal. The issue now was: whether the applicant in July, 1942, had miner's nystagmus, and, if so, for what period thereafter? Medical examinations in February and June, 1943, had revealed improvements in his condition. Pending the hearing of his case, the applicant had been doing light work, on the bank, for the respondents. He only claimed to be partially incapacitated, and the maximum amount of compensation would be 17s. per week. The respondents' case was that they had offered, by way of settlement, £225, and the applicant was willing to accept that amount. They would continue to employ the applicant on light work. His Honour Judge Caporn ordered the agreement to be recorded.

To-day and Yesterday.

LEGAL CALENDAR.

July 12.—On the 12th July, 1663, Sir Maurice Eustace, Lord Chancellor of Ireland, made his will, "being by God's signal providence brought through many good alterations and changes, which I have met with in the wilderness of this world, where I have had to do with unreasonable men, to a good old age and to be full of years and now drawing near to the great change that I must look for when this corruptible body must put on incorruption and this mortal shall put on immortality." He left half his personal estate to his wife, £15 to the poor and "all my law books and written manuscripts I leave as an heirloom to my heirs exclusively who shall study the law, which study I commend my heirs as being the most necessary and useful study for any one who intends to serve his king and country, and which presupposes a knowledge of all other learning."

July 13.—On the 13th July, 1854, Miguel Yzsquierdo, a young Spaniard, was tried at the Hertford Assizes for the murder of George Scales, a lad of fourteen, who had been found bludgeoned to death in a field where he was engaged in scaring birds from the crops with a gun. While under arrest the prisoner had declared that from that time he would never speak again and thereafter he never uttered a word. In court he stood with his eyes sullenly fixed downwards and after the jury had found that he was wilfully mute, the trial proceeded. The boy's body, which was still warm when it was discovered, was in the same field as that in which the prisoner was secured by a gamekeeper, whom he resisted with a large bloodstained bludgeon. The prisoner was found guilty and condemned to death, though his life was afterwards spared on the ground that the fact that the boy was armed with a gun created the possibility that there were unproved circumstances reducing the crime to manslaughter.

July 14.—On the 14th July, 1798, Henry and John Sheares, sons of a Dublin banker and members of the Bar, were executed in Green Street for high treason, having taken a leading part in planning the rebellion of that year. John was the leading spirit, who had involved his brother in the venture. They were buried in the crypt of St. Michael's, where the atmosphere has the peculiar quality of preserving the dead from decay though their coffins may crumble away. Long afterwards their bodies, the heads severed from the trunks, were to be seen in this place.

July 15.—On the 15th July, 1685, James, Duke of Monmouth, natural son of Charles II, was executed on Tower Hill for his part in the rebellion in the West of England, which was to have set him on the throne. His uncle, James II, had refused to spare his life. On the scaffold he avowed himself a member of the Church of England, but refused to make a "public and particular" condemnation of his revolt. However, after some hesitation, he responded by an "Amen" to repeated invitations to join in a prayer for the King. He gave the executioner six guineas, bidding him do his business well, but when he felt the axe's edge, he said he feared it was not sharp enough. He was right, for several blows were needed and even then the head had to be severed with a knife.

July 16.—On the 16th July, 1735, "at the Assizes at Abingdon, a clergyman was tried for killing a fallow deer, on the 9th April last in Windsor Great Park, which was found in his cellar. He confessed the whole matter but, alleging that his dog killed it against his will, the jury acquitted him."

July 17.—On the 17th July, 1772, "came on before Lord Mansfield at Westminster, a trial wherein Mr. Golightly, distiller, in Holborn, was plaintiff and Mr. Reynolds, attorney, defendant. The action was brought for part of the produce of two banknotes for £50, which had been stolen from the plaintiff by a person convicted last December sessions, which produce after the conviction was ordered by the court to be delivered to the plaintiff; yet, notwithstanding such order, the defendant as under-sheriff, laid claim to the effects and prevailed on the constables who had them in keeping to deliver them to him on behalf of the sheriffs. After a full hearing a verdict was given for the plaintiff, but a point of law arising from quoting an old Act of Henry VIII by the defendant's counsel Lord Mansfield thought proper to make it a case which is to be argued before the judges of the King's Bench." There the plaintiff succeeded, Lord Mansfield saying it would be hard "if an innocent party should lose his goods to the Crown because a felon had taken them away."

July 18.—On the 18th July, 1867, Sir John Rolt succeeded Sir George Turner as a Lord Justice of Appeal. The legal profession approved the appointment. He wrote: "I seemed to have reached home . . . Five or six hours of mental exercise in court and two or three more at home, and alone, without anything approaching a struggle for victory took the place of thirteen or fourteen hours of daily toil and strife which for nearly thirty years I had been engaged in."

On and after 16th July the address of the Prosecutions Branch of the Board of Trade will be Abbey House, Victoria Street, London, S.W.1. Tel., Abbey 4333.

Obituary.

MR. A. A. BAINES.

Mr. Athelstan Arthur Baines, solicitor, senior partner of Messrs. FitzHugh, Woolley, Baines & Co., solicitors, of Brighton, died on Sunday, 4th July, aged eighty-eight. He was admitted in 1881, and had been President of the Sussex Law Society.

MR. H. E. CURREY.

Mr. Harry Erskine Currey, solicitor, of Messrs. Barber & Co., solicitors, of Derby, died recently aged eighty. He was admitted in 1887, and had served as Under Sheriff for Derbyshire for a number of years.

MR. E. LYNSKEY.

Mr. Edward Lynskey, solicitor, of Messrs. G. J. Lynskey & Sons, solicitors, of Liverpool, died on Sunday, 27th June. He was admitted in 1915.

Parliamentary News.

HOUSE OF LORDS.

Finance Bill [H.C.].
Read Second Time. [13th July.
Hydro-Electric Development (Scotland) Bill [H.C.].
In Committee. [7th July.
London County Council (Money) Bill [H.C.].
Read Second Time. [7th July.
Northampton Corporation Bill [H.C.].
Reported with amendments. [7th July.
Nurses (Scotland) Bill [H.C.].
In Committee. [8th July.

HOUSE OF COMMONS.

Coal Bill [H.L.].
Emergency Powers (Isle of Man Defence) Bill [H.C.].
Read Second Time. [7th July.
Foreign Service Bill [H.C.].
Read Third Time. [7th July.
Isle of Man (Customs) Bill [H.C.].
Law Reform (Frustrated Contracts) Bill [H.L.].
Water Undertakings Bill [H.L.].
Read First Time. [8th July.

QUESTIONS TO MINISTERS.

TRADING WITH THE ENEMY.

Mr. HEWLETT asked the President of the Board of Trade whether, now that Algeria and Tunis have been liberated from the Axis, he will enable business men in this country, who wish to renew their pre-war connections, to communicate with their friends in those countries; and whether, for that purpose, he will ensure that the provisions of the Trading with the Enemy Act, 1939, are modified.

Mr. DALTON: This question is at present under discussion between His Majesty's Government and the Government of the United States of America. [6th July.

EXPEDITION OF DIVORCE CASES.

Mr. DOUGLAS asked the Attorney-General what steps are being taken to expedite the hearing of cases in the Probate, Divorce and Admiralty Division of the High Court of Justice.

The ATTORNEY-GENERAL (Sir Donald Somervell): The hon. Member's question must, I think, refer mainly to the state of the divorce lists; there is no delay in hearing Admiralty cases as soon as the parties are available, when a suitable day can be fixed. The Lord Chancellor is fully alive to the difficulty of disposing of divorce cases as expeditiously as could be wished. My noble Friend set up a committee some time ago to consider certain aspects of this question, and he expects to receive the report shortly. Meanwhile, the steps taken by the President of the Division to expedite the hearing of as many divorce cases as possible include special arrangements for the hearing of divorce cases where at least one party is in the Forces; the separation of the list of causes likely to take a long time to hear from the list of those likely to take a short time; the granting of applications to expedite particular cases on special grounds; and the arranging for sittings during the Vacation.

Mr. DOUGLAS: Is it not true that if some cases are expedited, other cases are so much the more delayed.

The ATTORNEY-GENERAL: I quite agree. As I said, we agree with my hon. Friend's point, but my Noble Friend is anxious to get the report of this committee before coming to a conclusion as to the best remedy.

Mr. DOUGLAS asked the Attorney-General whether, having regard to the many men and women serving in His Majesty's Forces who are concerned, he will take steps to reduce the interval between decree *nisi* and decree absolute in divorce from six months to three months.

The ATTORNEY-GENERAL: It is always open to a petitioner to ask the judge that the decree absolute should be expedited, and if the judge accedes, any necessary inquiries by the King's Proctor are also expedited. This practice is frequently followed in Service cases, and I do not think that it would be in the public interest to reduce the period of six months applicable under the Statute where no such application is made or granted.

Mr. DOUGLAS: Is not the right hon. and learned Gentleman aware that in order to expedite these cases very heavy fees have to be paid to the King's Proctor and that it is very unfair to those who are not well off.

The ATTORNEY-GENERAL: No, sir, I was not aware of that, and I will look into it. [7th July.

The Law Society.

ANNUAL GENERAL MEETING.

The Law Society held its annual general meeting at Chancery Lane on the 9th July, with the President, Sir Stanley Pott, in the chair.

Mr. E. E. Bird was elected President and Mr. A. C. Morgan Vice-President for the ensuing year.

Mr. Bird, in thanking the Society for conferring this honour on him, congratulated the President on the honour of knighthood which he had recently received.

The following members were elected unopposed to the council: Mr. D. L. Bateson, The Right Hon. E. L. Burgin, LL.D., M.P., P.C., Mr. G. A. Collins, Mr. H. C. Haldane, Lord Hemingford, P.C., Sir E. S. Herbert, Sir R. F. W. Holme, Mr. H. B. Lawson, Mr. G. F. Pitt-Lewis, Col. W. M. Smith, Mr. P. W. Taylor, and Mr. Fred Webster.

The following were elected auditors of the Society: Mr. H. L. H. Hill (professional), Mr. H. D. Haslewood and Mr. T. E. St. C. Daniell (honorary).

Mr. Morgan, in moving the adoption of the accounts, said that they again assumed a familiar shape, the expenditure exceeding the income by seven or eight thousand pounds on both the Society's and the articled clerks' account. Indications, however, were not lacking to show that the worst point had been passed. The deficits had been fairly closely estimated, and the loss of income from subscriptions, admissions, examination fees and preliminary fees might well have reached its peak. The policy of the council was still to bridge the gap from reserves, and they hoped to be able to carry on along these lines for a few more years. They would be obliged, however, to postpone plans for the better housing of the Society. The accounts were adopted without comment.

The President, moving the adoption of the annual report, said that 172 solicitors and 109 articled clerks were known to have lost their lives on active service, and 39 solicitors and 10 clerks had been posted as missing. Mr. E. R. W. Radcliffe, a newcomer to the council, had been killed on service with the First Army in North Africa, and had perhaps been the first member of the council to take part in a parachute landing. Perhaps the most noteworthy of the members who had brought distinction to the profession had been Lieut.-Commander R. P. Hichens, R.N.V.R., whose exploits had gained outstanding recognition before his lamented death.

The council were helping solicitors and articled clerks on active service by every means in their power, keeping their practices going, assisting their transfer to duties where their legal attainments would be more useful, and exempting certain solicitors from the annual contribution to the compensation fund. Many letters of appreciation showed that solicitors and clerks who were prisoners of war now had an ample supply of legal text-books. Arrangement had been made through the Red Cross for holding examinations for entry to the profession: several candidates had passed, and a substantial number of those who had taken the final examination had been awarded distinction.

Most solicitors thought and felt that if their costs were to continue to be governed by statute, these should be designed on a scale more compatible with modern usage, more in keeping with the scales of other professions, and more capable of variation in accordance with changes in the price of commodities. It was not just that figures which had been reasonable in 1882 should continue to be the basis of the charges, even if they were occasionally increased by inadequate additions. The present was not a suitable time for remodelling the system, but rising costs and increase in the salaries of staffs made it necessary to ask for some rise in the scale. The council felt it to be the view of a large number of solicitors that the 33⅓ per cent. increase already in force should be raised to 50 per cent. The generous bequest of the late Mr. E. J. Stannard would be used to provide bursaries for deserving entrants to the profession. The efforts of Parliament to close loopholes in the Finance Acts had led to some unforeseen results. The council had made representations, supported by the Institute of Chartered Accountants and the Association of British Chambers of Commerce, to the Lord Chancellor and hoped that some remedy would result. Mainly because of representations by the council, and especially by Sir Randle Holme, a provision had been inserted on the Third Reading of the last Finance Act excluding solicitors from the very onerous position in which they might have been placed by the provisions designed to prevent the evasion of tax. The council continued to co-operate with the War Office in the scheme for giving correspondence courses in legal subjects to sailors, soldiers and airmen. Nearly 3,000 men had already enrolled and letters of appreciation showed that the scheme had met with some success. Those members who had volunteered to correct test papers had made a valuable contribution.

Perhaps the best work of the Society had been done under the Poor Persons Procedure. Considering that solicitors' staffs were cut to the minimum, it was amazing that the whole procedure had not broken down. It was satisfactory that the Services Divorce Department had had assigned to it a large proportion of the total number of petitions. That all this work could have been done throughout the country at a time when everyone was short-handed was more than creditable. The President also paid tribute to the work of the members of the panels which had considered the applications for deferment of military service from solicitors and their clerks. Their recommendations had not been followed in all cases, but they would appreciate that the reason was the urgent need of man-power and not any disparagement of their judgment. The President closed his address with a hearty tribute to Mr. Bowler, the genial and ever-helpful porter of The Law Society, on his retirement after fifty-five years of faithful service. The many members who had known him in London and at provincial meetings would miss him greatly and would wish him many years of health and strength to enjoy his well-earned retirement.

Mr. King-Hamilton expressed (as did many later speakers) warm thanks to the council, secretary and staff for their excellent work on behalf of the profession. He proposed that the council, in representing the need for increasing the addition to the scale of 50 per cent., should also seek to abolish the rule that the increase should be shown at the end of the detailed bill of costs. Psychologically, he maintained, it was not good for the relation between solicitor and client that the client should encounter this addition. In many instances the solicitor could not explain it and the client felt he was being badly treated. If each individual item were increased by 50 per cent. this effect would not be produced. Briefs and instructions in single-spaced typing caused counsel great inconvenience and trouble. Solicitors should be permitted to leave a double space in these papers and also in important letters, for it was to the client's benefit that counsel should be able to read the letters without suffering from headache. The system of drafting Parliamentary Bills should be altered, and amending Bills should be drafted in full, incorporating the previous legislation and not merely referring to it. Moreover, the draftsman should make clear which provisions were retrospective. The state of the statutory rules and orders was chaotic; they were constantly being issued, withdrawn and amended, and were not sufficiently published, so that the public generally knew nothing about them and were constantly getting into trouble.

Mr. W. A. Bright regretted that the council had not yet circulated the draft rule dealing with solicitor-trustee accounts under the Act passed in November, 1941, nor indicated the action they intended to take to check defalcation, which seemed to have increased lately.

Mr. C. L. Nordon said that, although much had been done to assist returning solicitors and their clerks, more still remained to do. It would be tragic to find many members of the profession returning after perhaps six years' absence completely at a loss to know how to resume their profession. He recalled his earlier suggestion that the council should set up "service chambers" where they could refresh their knowledge of the law and practice and be assisted by a centralised staff and supervised by an experienced practitioner until they could again stand by themselves. He declared that solicitors' remuneration ought to be based partly on the magnitude of the transaction and the amounts involved. This principle already existed in conveyancing and probate matters, and he saw no reason why it should not be applied to every transaction. It was foolish to measure the work of a solicitor by the letters he wrote and the length of the documents he prepared. The real geniuses of the profession wrote very little and thought a great deal, but there was only scanty evidence of the thought they bestowed. Conveyancing transactions conducted in the Land Registry should be rewarded on the same scale as when the original deeds were dealt with. The statement of the percentage increase should be omitted from the bill of costs, nor was it ever necessary to deliver detailed bills; indeed, a bald narrative of proceedings which had been painful to the client must be distasteful to read. If a client wished to dispute a lump-sum bill, an experienced taxing master could easily assess the proper charge by an examination of the papers. Solicitors should be given the same freedom as barristers to earn higher remuneration by acquiring greater skill and experience.

Mr. Rawlence recognised that the reform and reorganisation of the scheme of charging could not be undertaken during war time, but the preliminary work could be done now, and the council could collect information on the systems in use in other countries. The medical profession based their charges on the patient's means, and accountants varied their costs according to whether the principal or the clerk had done the work. More irritation was caused to clients by solicitors' charges than by those of other professions, although these might be greater. The council should approach the problem from the psychological angle. The public had already forgotten that the solicitors paid a certain contribution each year to make up for defalcations. He asked whether it would be possible in future for the Society to send counsel to attend prosecutions with a watching brief, and at the end of the proceedings to mention to the magistrates the existence of the Compensation Fund and what it had done in the case before them. If the distribution could be made quickly before the proceedings, it would be very helpful to tell the magistrates and the public that of the particular defalcation which had been investigated a certain sum had already been refunded. At present the local press, from which most of the public learned what had taken place, created an unfortunate atmosphere which might be corrected in this way.

Mr. Gordon Macpherson said that for many hundreds of years prejudice had existed against the legal profession. He suggested that, when the Society proposed to move in any matter, the Secretary should set the facts out clearly for the Press, and request that they should be given publicity. Some newspapers had treated the recent request for an increase of the addition to costs from 33⅓ per cent. to 50 per cent. in such a way as to imply that the solicitors had already had an increase in 1935 and were now greedily asking for another addition.

Dr. George Martin said that, although a receiver had the benefit of all the technical staff who had been working in the concern before the receivership, he was far more highly paid than a solicitor doing similar work. The receiver of a certain cinema business had originally claimed for himself 5 per cent. of the gross receipts; the master had cut down this demand to 2½ per cent., but by the end of four years the accountant had been granted about £12,000. Even that did not quite satisfy him, for on the submission fo a scheme of reconstruction to the court he asked for additional remuneration which would have amounted to another £5,000. The judge had sent the scheme back to the master, but the master apparently treated accountants with kid gloves, and said that the court must have the best type of receiver and therefore must give him a good fee. This attitude contrasted with the very strict taxation accorded to a solicitor's bill which dealt with the same matters.

Mr. CLAUDE HORNBY said that remuneration should be governed by the position of the client, the magnitude of the work and the status and length of service of the solicitor. The difficulty could be got over to a considerable extent if solicitors were allowed to charge lump-sum fees without the horrible feeling, which was abominably unfair, that if they said to the client that the work would cost thirty-five guineas, the client could take it or leave it, but if he agreed, the solicitor could not then ask for more but the client could go within six months to the taxing master and require the solicitor, whatever his status, to justify the charge.

Mr. AMBROSE APPELBE said that the Society was approaching the question of remuneration from a wrong angle. As a society of gentlemen practitioners they were not out to squeeze the public of as much as they could, but to gain a fair remuneration for the services they gave, in the simplest way and without friction. The Council's first thought should be how to simplify the solicitor's work. The profession lost a tremendous amount of labour in routine work, and it was incredible that the Society should have swallowed whole the cumbrous work of the Services Divorce Procedure. Much taxation could be eliminated—for instance, on the preparation of increased bills. It would be better to charge a lump sum if the master were reasonable. Solicitors must look at the matter from the point of view of the public or they would be regarded as greedy and of having a vested interest in the great mumbo-jumbo of the law.

The PRESIDENT replied, cordially agreeing that the addition to the scale of costs should not be shown. To a great extent paper economy was forced upon solicitors, but Master Jelf had said that if the barrister requested the solicitor to have his brief and instructions double-spaced, they could be so typed. The Council had carefully examined Mr. Nordon's proposals for service chambers and found it impracticable. Sir Stanley also agreed that the fees for land registry work should be increased, but as the purpose of the registry was to cheapen land transfer, the objection was always raised that a greater remuneration would make it more costly. The council had already up to the beginning of the war been collecting information from various countries; it would be very useful to have a complete statement from all countries to show how far England lagged behind. It would, he thought, be fatal to bring the compensation fund to the attention of magistrates; it would prejudice the trial, it could not properly be taken into consideration, and although it might redound to the Society's credit, it would not be the correct thing to do. He did not know of much complaint about the treatment of the profession by the Press. The council kept in fairly close contact with the Press, and he did not think that even the paragraph which had been mentioned had done much harm. Undoubtedly accountants were more highly paid than solicitors, and when, eventually, an attempt was made to get solicitors' remuneration on to a different footing, evidence of the remuneration given to accountants, auditors and the like ought to be brought forward and really carefully considered. Very few solicitors actually had a lump sum charge taxed within six months.

The report was adopted unanimously.

Major P. ASTERLEY JONES moved—

That the Council do forthwith appoint a committee to examine and report on possible measures to be taken whereby—

(*a*) entry into the profession may be made independent of the possession of financial means, and

(*b*) legal costs may be reduced.

That this committee do consider in particular, but not exclusively, the following matters:—

(*a*) the prohibition of premiums on articles of clerkship;

(*b*) the legal education of solicitors' clerks;

(*c*) the assumption by the State, with safeguards, of the liability for all costs incurred on appeal; and

(*d*) the extension of the right of audience of solicitors.

The dead wood, he said, should be cut out of legal procedure. The articled clerks' premium had the effect of limiting the material available to The Law Society in selecting recruits. The giving of articles free had generally met with success, but it usually brought into the profession men of an age beyond that at which they could easily pass examinations. If recruits were drawn from a wider section of the population the council would have to take much greater responsibility for legal education. The litigant should not be required to pay to correct the errors of courts; and on an appeal from the police court or county court the solicitor who had acted there should be given right of audience, for many litigants were very irritated at having to pay for counsel on these appeals.

Mr. EVANDER EVANS seconded the motion and advocated the abolition of premium and stamp duty. Mr. NORDON favoured a system by which a recruit would work without articles and his principal would be closely cross-examined about his character and ability by a selection committee.

The motion was lost by a substantial majority.

Mr. HORNBY moved a vote of thanks to the President for the courteous, kindly and efficient manner in which he had conducted the proceedings, and the President, in reply, commended the help which the Secretary, Mr. T. G. Lund, had continuously given him.

Practice Direction.

The attention of practitioners is called to s. 8 of the Adoption of Children (Regulation) Act, 1939.

The Senior Chancery Judge has directed that Originating Summonses under the Adoption of Children Act, 1926, shall be intituled "In the matter of the Adoption of Children Act, 1926, and Amending Act."

A. H. HOLLAND,
July, 1943. Chief Master, Chancery Division.

Notes of Cases.

HOUSE OF LORDS.

Chamberlain *v.* Inland Revenue Commissioners.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord MacMillan, and Lord Romer. 9th June, 1943

Revenue—Income tax—"Settlement"—Finance Act, 1938 (1 & 2 *Geo.* 6, *c.* 46), *ss.* 38 (2), 41.

Appeal from the Court of Appeal.

The appellant was the owner of shares in a company called C, Ltd. In December, 1935, he caused S, an unlimited company, to be incorporated with a share capital of £100,000, divided into 50,000 preference shares of 10s. and 7,500 ordinary shares of £10 each. Three days later, the appellant sold to S 470 shares in C, Ltd., for £100,000, the price being satisfied as to £17,500 by the issue to the appellant of 35,000 10s. shares, the balance being left on loan. By a settlement of 10th March, 1936, the appellant paid £3,500 to trustees, to hold on trust for his wife and four children. That sum was invested in the purchase of 350 ordinary shares of £10 each in S. That settlement was within s. 38 (2) of the Finance Act, 1938. In December, 1938, the articles of association of S were altered, so as to divide the 7,500 ordinary shares into five classes, A, B, C, D and E. Class A comprised the shares subject to the settlement of 1936. Each class of share was entitled to such dividend as the company should determine. On 7th December, 1936, the appellant executed four settlements, one in favour of each of his four children. Under each settlement the sum of £100 was paid to trustees. These sums were invested respectively in the purchase of B, C, D and E £10 ordinary shares. The next year the dividends were invested by the trustees in purchasing additional shares. The assessment under challenge was based on the view that the settlements of March and December, 1936, together with the incorporation and structure of S, constituted an arrangement amounting to a "settlement" within s. 41 (4) (*b*) of the Finance Act, 1938, and that the appellant was the settlor, and the company's income was rightly treated as his income under s. 38 (2). The assessment was arrived at as follows. In the year ending 5th April, 1938, S paid to the trustees of each settlement of 7th December, 1936, dividends amounting in all to £11,730. No dividend was paid on the A shares. S also paid to the appellant £875 in respect of his preference shares. The total income of the company, after paying the £875, was £11,898, and the additional assessment was made on the appellant in respect of that sum. That assessment having been affirmed by Lawrence, J., and the Court of Appeal, the appellant appealed to the House of Lords.

LORD THANKERTON said that while the formation of S provided an available investment for the sums settled under the five deeds of settlement, under which the children's provisions were actually constituted, the continuance of such investment was not essential to the continuance of the trusts under the deeds of settlement. S, though controlled by the appellant, did not hold its assets as part of the provisions settled on the children. The whole assets of S did not constitute the property comprised in the settlements and the assessment could not stand.

The other noble and learned Lords agreed in allowing the appeal.

COUNSEL: *Cyril King*, K.C., and *N. C. Armitage*; *The Attorney-General* (Sir Donald Somervell), K.C., *J. H. Stamp* and *R. P. Hills*.

SOLICITORS: *Bartlett & Co.*; *Solicitors of Inland Revenue*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

The Executors of Hamilton-Russell *v.* Inland Revenue Commissioners.

Scott, Luxmoore and du Parcq, L.JJ. 1st April, 1943.

Revenue—Sur-tax—Settlement—Right of beneficiary on attaining twenty-one years of age to terminate trust and require trustees to hand over fund—Failure of beneficiaries to exercise right until ten years after attaining twenty-one years of age—Claim of Crown to sur-tax on ten years' accumulated income.

Appeal from the judgment of Macnaghten, J.

By a settlement dated 17th June, 1918, Lord B. directed his trustees to accumulate the income of the trust fund until the settlor's death, and then stand possessed of the fund and accumulations for the benefit of such son or daughter of his who should be tenant in tail male by purchase of certain freehold estates, and should first attain the age of twenty-one years. H. R., the eldest son of the settlor in his father's lifetime, attained twenty-one years of age on 17th October, 1928, and became tenant in tail male by purchase of such estates. H. R. thus became sole beneficiary under the settlement on that date, and therefore could forthwith have required the trustees to hand over the fund and the accumulations to him. He, however, did not attempt to exercise his right so to do until 18th January, 1939, when he required the trustees to hand over to him the accumulations which had accumulated since 17th October, 1928, and which on 18th January, 1939, amounted to £14,530. The Special Commissioners held that there was a liability during the year of assessment 1938–39 for sur-tax on the £14,530 in spite of the fact that no part of the same had been paid as income to H. R. during the period of accumulation. Before Macnaghten, J., the Crown conceded that H. R. was only liable to sur-tax on such part of the £14,530 as represented the income for the year of assessment 1938–39. Macnaghten, J., held that H. R. was not liable to sur-tax on any part of that sum.

The Crown appealed.

The judgment of the Court of Appeal was delivered by LUXMOORE, L.J., who said that the question to be asked was not, "Is there any income," but "to whom did the income belong during the period 5th April, 1938,

to 18th January, 1939?" To that question there was only one answer, and it was that the income during that period belonged to H. R., for on the date when H. R. attained twenty-one years of age the trusts became unenforceable and ineffective because the funds were at home and belonged solely to H. R. for his own absolute use and benefit. The settlement was indistinguishable in its material features from the will in *Wharton* v. *Masterman* [1895] A.C. 186, in which it was held that the trust for accumulation had become unenforceable and therefore, ineffective. The appeal would be allowed and a declaration made that an additional assessment be made for the year in question in respect of that part of the £14,530 which represented income for the period between 5th April, 1938 and 18th January, 1939.

COUNSEL: *The Solicitor-General* (Sir D. P. Maxwell Fyfe), K.C.; *J. H. Stamp*, and *R. P. Hills*; *Cyril King*, K.C., and *N. C. Armitage*.

SOLICITORS: *Solicitor of Inland Revenue*; *Gregory, Rowcliffe & Co.*, for *Wilson & Co.*, Durham.

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Pearl Assurance Company, Ltd. *v.* **O'Callaghan (I.T.).**

Scott, Luxmoore and du Parcq, L.JJ. 16th April, 1943.

Revenue—Income tax—Sched. A tax—Landlord and tenant—Allowance made to landlord for repairs—Covenant to render service to tenants of office buildings—Repairs to lift and construction of new lift gateway—Whether cost of repairs and construction deductible from landlord's assessment to Sched. A tax—Income Tax Act, 1918 (8 & 9 *Geo.* 5, c. 40), *Sched. A—Rules applicable to Sched. A, rr.* 1, 5, *paras.* 7 (1) (*f*), 8.

Appeal from the judgment of Macnaghten, J.

A company as landlords had let a certain block of office buildings to several tenants. They were assessed to income tax under Sched. A under the provisions of No. VII, r. 8, of the rules applicable to Sched. A. Under No. V, r. 7 (1) and (3) (*c*), as amended, of the same rules, the company were entitled to a deduction from the amount assessed to the extent of £20, together with a sum equal to one-sixth of the amount by which the assessment exceeded £100, where the company paid for the repairs of the buildings, and as the company undertook to pay for the repairs, it was entitled to the deduction allowed. Furthermore, it was admitted by the Crown, that in estimating the rack-rent for the purposes of assessment, the company was entitled, under No. I, to deduct the cost of certain services they had covenanted to provide, including the service of a common lift. The Crown, however, would not admit that the company were entitled to deduct the cost of certain repairs to the lift and also the cost of the construction of a new landing gate and guides incurred during the year of assessment, amounting to £131 2s. Macnaghten, J., held that the sum of £131 2s. was properly deductible as being part of the cost of service of the lift.

The Crown appealed.

SCOTT, L.J., in giving the judgment of the Court of Appeal, said that the lift was in its nature essentially a part of the hereditament in respect of which No. VII, r. 8, of the rules puts both assessment and charge upon the landlord, and, therefore, the repair of the hereditament must be effected by the landlords at their own expense in order that it should command its several rack-rents, just as in the case of an ordinary case. If the lift was not a part of the hereditament, at any rate, it would be deemed so for the purpose of Sched. A; see Finance Act, 1936, s. 22, which said: "No account shall be taken of the value of non-rateable machinery in ascertaining annual value." "Non-rateable machinery" was defined in that section by reference to s. 24 of the Rating and Valuation Act, 1925, which brought in the definition of the Third Schedule and thus included "lifts" in "rateable machinery" as part of the hereditament. The sum of £131 2s. was, therefore, not deductible and the appeal would be allowed.

COUNSEL: *The Solicitor-General* (Sir D. P. Maxwell Fyfe), K.C., and *R. P. Hills*; *Cyril King*, K.C., and *Frederick Grant*.

SOLICITORS: *Solicitor of Inland Revenue*; *W. H. Warne*.

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Ingram *v.* **United Automobile Service, Ltd., and Another.**

MacKinnon and du Parcq, L.JJ., and Uthwatt, J. 18th, 19th May, 1943.

Tort—Apportionment of liability between two defendants—Court of Appeal's jurisdiction to interfere with apportionment—Maritime Conventions Act, 1911 (1 & 2 *Geo.* 5, *c.* 57), *s.* 3—*Law Reform* (*Married Women and Tortfeasors*) *Act*, 1935 (25 & 26 *Geo.* 5, *c.* 30), *s.* 6.

Appeals by two defendants from a judgment of Hallett, J., in an action for damages for personal injuries arising out of the alleged negligence of one or the other or both of two defendants. Hallett, J., gave judgment for the plaintiff against both defendants and held that one of the defendants was liable for two-thirds of the damage and the other defendant was liable for one-third.

MACKINNON, L.J., said that he agreed with Hallett, J., that both defendants were negligent. With regard to the proportion of the damages to be borne by each defendant, a question of some difficulty arose, whether it was open to the court to review the apportionment of liability found by the judge. In *The Testbank* [1942] P. 75, this court thought that in principle there was no reason why this decision of fact should not be open to review like any other decision of fact, and the court pointed out that exactly the same position would arise with regard to the apportionment of liability between two defendants under the Law Reform (Married Women and Tortfeasors) Act, 1935. In *British Fame* v. *MacGregor* [1943] A.C. 196, the House of Lords held that the Court of Appeal's decision in *The Testbank* was wrong. It would have been kinder to the Court of Appeal if the House of Lords had intimated whether the same rule was to be applied under the 1935 Act as in the Maritime Conventions Act, 1911, in the case of a ship. Since they were both modern statutes his lordship could see no difference in the duty imposed on a judge of first instance first by the 1911 Act and secondly by the 1935 Act. Applying the rule laid down by Viscount Simon, L.C., that since the findings of fact were not disputed, the court ought not to interfere with the apportionment of the blame by the judge, the court would dismiss the appeal with costs.

DU PARCQ, L.J., delivered a judgment to the same effect, and UTHWATT, J., concurred.

COUNSEL: *Humfrey Edmunds*; *Gilbert Beyfus*, K.C., and *Dr. Charlesworth*, *S. R. Edgedale*.

SOLICITORS: *Stanley & Co.*, for *J. H. Sinton & Co.*, Newcastle-upon-Tyne; *Isadore Goldman & Son*, for *R. R. Crute & Son*, Newcastle-upon-Tyne, *Eric G. Floyd*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

E.P. 916. **Defence** Fireguard Regulations, 1943. Order in Council, June 30.

E.P. 911/915 (as one document). Defence (General) Regulations, 1939. Orders in Council, June 30, amending reg. 29B; amending reg. 39; amending reg. 42A; adding reg. 60CB (Suspension of certification of electricity meters); amending reg. 70 and adding reg. 70A (Modification of enactments relating to speed limits and trailers).

E.P. 903. **Milk** (Control of Supplies) Order, 1942, and Milk (Control of Supplies) (Scotland) Order, 1942. Supplementary Directions, June 29.

E.P. 910/S.30. **Rats and Mice** (Scotland) Order, June 25.

No. 900. **Unemployment Insurance** (Contributions) (Amendment) Regulations, June 21.

Notes and News.

Honours and Appointments.

The King has approved the recommendations of the Home Secretary that Mr. ARTHUR SAMUEL WARD, K.C., be appointed Recorder of Coventry in succession to Mr. Maurice Healy, K.C., and Mr. GILBERT GRANVILLE SHARP be appointed Recorder of King's Lynn in succession to Mr. Henry St. John Digby Raikes, K.C. Mr. Ward was called by Lincoln's Inn in 1906, and Mr. Sharp by the Middle Temple in 1921.

The Lord Chancellor has appointed Mr. S. V. PINNIGER, Registrar of the Newbury County Court, and Mr. R. L. BARNES, Registrar of the Hungerford County Court, to be Joint Registrars of Newbury and Hungerford County Courts as from the 12th July, 1943.

Squadron-Leader J.'C. G. BURGE has been appointed Prosecuting Counsel to the Post Office at the Central Criminal Court in succession to Mr. R. E. Seaton. Squadron-Leader Burge was called by the Inner Temple in 1932.

Mr. H. H. DUNCAN, Assistant Legal Adviser, has been appointed Legal Adviser in the Dominions Office and the Colonial Office in succession to the late Sir Kenneth Poyser. Mr. K. O. WRAY, Second Assistant Legal Adviser, has been appointed Assistant Legal Adviser.

Miss C. EIRIAN EVANS, LL.B., a partner in the firm of Messrs. J. R. Williams & Co., solicitors, Abergele and Colwyn Bay, has been appointed Deputy-Superintendent Registrar for the Abergele and Colwyn Bay districts. Miss Evans was admitted in 1941.

Notes.

Sir John Eldon Bankes, who was eighty-nine recently, announced his retirement from the chairmanship of Flintshire Quarter Sessions, which he has held for thirty-three years. The court agreed to nominate as his successor Mr. George Bankes, Sir John Bankes's nephew.

The usual monthly meeting of the Directors of the Law Association was held on the 5th July, Mr. C. D. Medley in the chair. There were six other Directors present. A sum of £86 was voted in relief of deserving applicants and other general business was transacted. The gift was reported from Mr. Bertram Tuff, a life member, of £21 to be applied by payments of one guinea per annum for twenty years or in the event of his death any unexpended balance to at once become moneys belonging to the association.

Wills and Bequests.

Sir Christopher John Wickens Farwell, a Judge of the Chancery Division of the High Court, left £27,602, with net personalty £26,331.

Master Herbert William Jelf, Master of the Supreme Court of Judicature, Chancery Division, left £13,759, with net personalty £13,388. He left £500 each to the C.O.S. and the Royal National Lifeboat Institution.

His Honour Judge Alfred Ravenscroft Kennedy, K.C., of Abbington, Glos., left £25,688, with net personalty £17,431. He left the Richmond portrait of his father to the Hon. Society of Lincoln's Inn, whom failing, to the National Portrait Gallery, and all real estate to his wife for life and then Hinton Cottage, Ablington, to the Bibury Charity, and the remainder to the Hon. Society of Lincoln's Inn for a scholarship in memory of his father.

Mr. Robert Hugh Whittington, solicitor, of Bath, left £20,062, with net personalty £17,171.

Mr. Basil Richard Woollcombe, solicitor, of London, W.11, left £18,390, with net personalty £17,935.